

DEC 18 2003**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT****CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MOHAMMAD HOMAYON SAKHI,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-70228

BIA No. A72-084-844

ORDER

Before: THOMPSON, HAWKINS and BERZON, Circuit Judges

The Memorandum disposition filed on October 9, 2003, is amended as follows:

On page 2, following the second complete sentence that reads “The court later issued an Order Modifying Sentence which ordered him to serve an additional 105 days; it is not clear, however, whether this modification was related to the arson or the harassment charge,” insert “Therefore, the government has not borne its burden of proving Sakhi was convicted of an aggravated felony. However, as Sakhi conceded below, even if not an aggravated felony, his arson constitutes a crime of moral turpitude that renders him deportable. 8 U.S.C. § 1227(a)(2)(A)(I).”

On page 2, delete the second sentence of the first indented paragraph and the

citation that follows. That sentence and citation read “As Sakhi conceded below, even if not an aggravated felony, his arson constitutes a crime of moral turpitude that renders him deportable. 8 U.S.C. § 1227(a)(2)(A)(I).”

The amended page 2 reads as follows:

conceded at oral argument, that second degree arson is a “crime of violence” involving the use of force against persons or their property, 18 U.S.C. § 16, we believe the record is ambiguous with respect to whether or not Sakhi received a sentence of more than one year. Sakhi was initially sentenced to 9 months in jail on the arson charge, and also, on the same day and as part of the same case, received a 12-month suspended sentence on a misdemeanor harassment charge. The court later issued an Order Modifying Sentence which ordered him to serve an additional 105 days; it is not clear, however, whether this modification was related to the arson or the harassment charge. Therefore, the government has not borne its burden of proving Sakhi was convicted of an aggravated felony. However, as Sakhi conceded below, even if not an aggravated felony, his arson constitutes a crime of moral turpitude that renders him deportable. 8 U.S.C. § 1227(a)(2)(A)(I).

Reaching Sakhi’s claims on the merits, we conclude that Sakhi

cannot prevail. Substantial evidence supports the IJ's conclusion that Sakhi has not demonstrated his eligibility for asylum, withholding of removal or relief under the Convention Against Torture.¹ Although past persecution may create a presumption of future persecution, in this case, the past persecution Sakhi claims to have endured was at the hands of agents of the Soviet Union, which no longer controls Afghanistan. See 8 C.F.R. §

With the foregoing amendments, the panel denies Petitioner's Petition for Panel Rehearing.

¹The BIA in this case adopted the reasoning of the IJ and therefore we review the IJ's decision. Alaelua v. INS, 45 F.3d 1379, 1382 (9th Cir. 1995).